

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

STATE OF LOUISIANA,

Plaintiff,

v.

SANOFI-AVENTIS U.S. LLC, *et al.*,

Defendants.

Civil Action No. 3:23-cv-00302-
BAJ-SDJ

Removed from Case No. C-729791,
19th JUDICIAL DISTRICT COURT,
PARISH OF EAST BATON
ROUGE

**CAREMARKPCS HEALTH, L.L.C.’S SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO PLAINTIFF STATE OF LOUISIANA’S MOTION TO REMAND**

CaremarkPCS Health, L.L.C. (“CVS Caremark”) files this Supplemental Memorandum in Opposition to Plaintiff State of Louisiana’s Motion to Remand to direct the Court’s attention to two remand rulings that were decided after the filing of the last brief served in this case by CVS Caremark: *People v. Eli Lilly & Co., et al*, No. 2:23-cv-01929-SPG-SK, 2023 WL 4269750 (C.D. Cal. June 28, 2023) (“*California*”) and *Government of Puerto Rico v. Eli Lilly and Co., et al*, No. 23-1127-JAG (D.P.R. July 13, 2023) (“*Puerto Rico*”). The two rulings are attached hereto as Exhibits 1 and 2, respectively. Because each of those rulings turns solely on a plaintiff’s disclaimer of all claims relating to any federal program—and because no such disclaimer exists here—neither decision supports the pending motion to remand before this Court. *See* ECF No. 24. Additionally, even if the California and Puerto Rico decisions were not distinguishable, both are fundamentally flawed and currently are on appeal. For the reasons addressed at greater length in CVS Caremark’s opposition, the State’s motion should be denied.

First, the primary basis for the remand rulings in *California* and *Puerto Rico* does not apply here. In both of those cases, the plaintiff purported to disclaim all claims relating to any federal

programs. The remand orders relied heavily (*Puerto Rico*) or exclusively (*California*) on those disclaimers. See *California*, No. 2:23-cv-01929, ECF No. 1-1, at 10 n.1; *Puerto Rico*, 23-1127, ECF No. 1-1, at 7. The State's complaint here contains no such disclaimer. *California* and *Puerto Rico* are, therefore, inapposite.

Second, the *California* and *Puerto Rico* decisions are flawed on their own terms. In both instances, the parties disagreed on whether it is possible to separate CVS Caremark's negotiations on behalf of Federal Employee Health Benefit plans from its negotiations on behalf of other payors unaffiliated with the federal government (such that the plaintiff could effectively disclaim conduct that occurred under a federal officer). In both instances, the court resolved that factual dispute in favor of the party seeking remand. But in both the Ninth Circuit and the First Circuit, governing law requires that a court resolve factual disputes in favor of the party seeking removal on federal-officer grounds. The *California* and *Puerto Rico* decisions, therefore, are fundamentally flawed. CVS Caremark and Express Scripts both have filed notices of appeal in both jurisdictions.

The *California* and *Puerto Rico* remand rulings, in short, are distinguishable and incorrect.

This 14th day of July, 2023

Respectfully submitted,

/s/ James A. Brown

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2023 I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. Notice of this filing will be sent to all counsel of record registered to receive electronic service by operation of the Court's electronic filing system.

/s/ James A. Brown